

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DB STRUCTURED PRODUCTS, INC.,)

Plaintiff,)

-against-)

ACT LENDING CORPORATION,)

Defendant.)
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ECF CASE

07 Civ. 4117 (DLC)

AFFIDAVIT OF
JOHN P. DOHERTY

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JOHN P. DOHERTY, being duly sworn, deposes and says:

1. I am a member of Thacher Proffitt & Wood LLP ("TPW"), counsel for plaintiff DB Structured Products, Inc. ("DBSP"). I have never been the subject of a disciplinary proceeding or received any professional censure in connection with the practice of law. Unless otherwise noted, I have personal knowledge of the facts set forth herein based on my personal involvement in this lawsuit or based on TPW's books and records.

2. I was admitted to the bar of the State of New York and the United States District Court for the Southern District of New York in 1997.

3. TPW is a full-service commercial and financial services law firm. I am a business litigator and represent clients in commercial litigation matters, including loan-related litigation and workouts.

4. TPW has served as counsel to DBSP in this matter since March 2007. In that capacity, TPW provides advice and counsel concerning, and assists in enforcing DBSP's rights relating to, certain agreements between DBSP and Defendant, as described in the Complaint.

5. I submit this affidavit in support of DBSP's application for attorneys' fees in this matter.

6. I am the TPW partner who is principally responsible for this matter. I have personal knowledge of the legal fees and the costs incurred by DBSP in this litigation.

7. As a partner at TPW, I have direct access to TPW's attorney time-keeping system.

8. Attached hereto as Exhibit A are the invoices detailing the legal fees and expenses associated with this litigation. In no fashion should this affidavit be construed as a waiver of the attorney client privilege or the protections afforded by the work-product doctrine.

9. The billing rates of TPW attorneys and paraprofessionals are located on a summary page at the end of each invoice.

10. These fees were billed in accordance with TPW's billing rates and procedures. The rates charged by TPW for the services rendered by its professionals and paraprofessionals are the same or lower rates than TPW charges for professional and paraprofessional services rendered in comparable matters, because DBSP generally received a discounted fee.

11. The fees requested by TPW are reasonable based on the customary compensation charged by comparably skilled practitioners in similar matters in a competitive national legal market.

12. TPW's billing records are generated by individuals with a professional and business responsibility to make and to keep them accurately, and it is, therefore, reasonable and appropriate to rely upon them for information as to the actual and total legal fees and expenses incurred by or on behalf of DBSP in enforcing its rights in this case.

13. Disbursements include, but are not limited to: court fees, photocopying charges, telephone charges, mailing charges and ground transportation. A detailed schedule of such expenses -- which shows only the disbursements for which reimbursement is sought herein -- is included in each monthly invoice.

14. The total fees and expenses incurred by TPW on DBSP's behalf for this matter through and including August 31, 2007 are \$16,457.36.

15. DBSP reserves the right to supplement this application for attorneys' fees.

/s/ John P. Doherty

JOHN P. DOHERTY

Sworn to before me this
14th day of September 2007

/s/ Brendan E. Zahner

Notary Public